

E-filed on August 2, 2006

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 USA Capital Diversified Trust Deed Fund, LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

In re:
 USA SECURITIES, LLC,
 Debtor.

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under
 Case No. BK-S-06-10725-LBR

Date: August 4, 2006

Time: 9:30 a.m.

Place: Courtroom #2

**DIVERSIFIED TRUST DEED FUND
 COMMITTEE'S MOTION TO
 STRIKE FIRST TRUST DEED FUND
 COMMITTEE'S SUR-REPLY**

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☒ USA Capital Diversified Trust Deed Fund, LLC
- ☒ USA First Trust Deed Fund, LLC

(Affects indicated Debtors)

TO THE HONORABLE LINDA B. RIEGLE, UNITED STATES BANKRUPTCY JUDGE:

The Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC (the "Diversified Fund Committee"), appointed in the chapter 11 case of USA Capital Diversified Trust Deed Fund, LLC ("Diversified"), submits this motion to strike the Omnibus Reply to the Responses and Oppositions Filed Against the Debtors' Motion to Distribute Funds and to Grant Ordinary-Course Releases and Distribute Proceeds (the "Sur-Reply") filed by the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC (the "First Fund Committee"). In support thereof, the Diversified Fund Committee states as follows:

1. The First Fund Committee did not file the Debtors' Motion to Distribute Funds and to Grant Ordinary-Course Releases and Distribute Proceeds (the "Distribution Motion") and, thus, is not the moving party on the matter.

2. The First Fund Committee is one of several parties having timely filed pleadings in opposition to the Distribution Motion.

3. The First Fund Committee has now also filed the Sur-Reply – with only 1 business day's notice before the Omnibus Hearings set for this Friday, August 4, 2006, at 9:30 a.m. – to oppose the oppositions to the Distribution Motion filed by the Diversified Fund Committee and the Official Committee of Unsecured Creditors.

4. The parties in interest obviously have different positions and differences of opinion regarding the Distribution Motion. Yet, no other party opposed to the Distribution Motion filed any sur-reply to the other oppositions filed in response to the Distribution Motion because to do so is inappropriate.

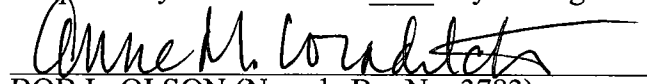
1 5. Under this Court's own rules of procedure and its Orders entered in the above-
2 captioned bankruptcy cases, the Sur-Reply is improper and should be stricken from the record.
3 See LR 9014; Case Administration Orders.

4 6. For the Court to give the Sur-Reply any consideration whatsoever, being filed on
5 such short notice when the other opposing parties who followed this Court's rules are focused on
6 preparing for the Omnibus Hearings (as is the Court), would be patently unfair in these cases
7 when there are myriad issues to be addressed and affording time and attention to address
8 improperly filed pleadings is uncharacteristically costly.

9 7. Moreover, not striking the Sur-Reply would set a dangerous precedent for
10 response after response after response to be filed when other hotly contested issues, that are just
11 over the horizon, come to the forefront. It is difficult enough to manage the deluge of paper
12 triggered by the various constituencies in these cases given the tight time constraints for
13 responses to be timely filed without the floodgates being flung open to improper filings.

14 WHEREFORE, for the forgoing reasons, the Diversified Fund Committee respectfully
15 requests that the Court strike the Sur-Reply and consider only those pleadings properly filed
16 under this Court's rules of procedure and Orders previously entered in these cases when deciding
17 the Distribution Motion.

18 Respectfully submitted this 2nd day of August 2006.

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